

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FERNANDO NUNEZ** : **CIVIL ACTION**  
:  
**v.** : **NO. 14-2192**  
:  
**SUPERINTENDENT BERNADETTE** :  
**MASON, ACTING SECRETARY OF** :  
**THE PENNSYLVANIA DEPARTMENT** :  
**OF CORRECTIONS GEORGE** :  
**LITTLE, PENNSYLVANIA STATE** :  
**ATTORNEY GENERAL JOSHUA** :  
**SHAPIRO** :

## ORDER

**AND NOW**, this 17<sup>th</sup> day of May 2023, upon considering the Petition for writ of habeas corpus, amended Petition, and Petitioner's counseled Memorandum (ECF Doc. Nos. 1, 22, 42), the District Attorney's Response (ECF Doc. No 51) conceding habeas is warranted based on the grounds raised in Petitioner's Claim One without addressing the other six Claims, the parties' supplemental briefing (ECF Doc. Nos. 56, 57) addressing concerns raised in our April 6, 2023 Order (ECF Doc. No. 52), based upon our independent review allowing us to find the Pennsylvania Superior Court applied a harmless error analysis to Petitioner's Sixth Amendment self-representation claim contrary to clearly established federal law, for reasons in today's accompanying Memorandum, and for good cause, it is **ORDERED**:

1. We **GRANT** the Petition for writ of habeas corpus (ECF Doc. No. 1, 22) as to Claim One finding the state trial court's mid-trial voir dire process in Petitioner's absence when representing himself violated Petitioner's Sixth Amendment right to self-representation and the Pennsylvania Superior Court applied a harmless error analysis of this constitutional violation contrary to established federal law;

2. We **STAY** the writ of execution to **November 15, 2023** to allow the Commonwealth to either dismiss the charges forming the basis of the challenged conviction or commence a new trial on all counts of conviction and if the Commonwealth does not dismiss the counts of conviction or commence trial before **November 15, 2023**, the writ of habeas corpus shall issue upon Notice from the Petitioner and the Commonwealth shall then forthwith vacate the Petitioner's conviction; and,

3. Petitioner shall file a Notice on or before **May 30, 2023** advising as to whether his Claims Two through Seven can now be dismissed to allow us to enter a final order including addressing a certificate of appealability.

  
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KEARNEY, J.